

ATTACHMENT

Digest of Differences Between ALJ Yacknin's Proposed Decision and the Alternate Proposed Decision of Commissioner Peevey Granting the Intervenor Compensation Request of the Utility Consumers' Action Network for Substantial Contribution to D.13-11-004

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the proposed decision of Administrative Law Judge (ALJ) Yacknin (mailed on April 8, 2014) and the alternate proposed decision of President Michael Peevey, (mailed on July 2, 2014).

The ALJ's proposed decision concludes the Utility Consumers' Action Network did substantially contribute to D.13-11-004 and awards \$8,771.60.

The alternate proposed decision differs from the proposed decision, finding that the Utility Consumers' Action Network substantially contributed to D.13-11-004 and awards the intervenor \$26,416.60 in compensation.

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER PEEVEY**
 (Mailed 7/2/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company
 (U 902-E) for Approval of a Settlement Agreement
 and Related Amendments to its Power Purchase
 Agreements with Otay Mesa Energy Center, LLC and
 Calpine Energy Services, L.P.

Application 13-05-012
 (Filed May 17, 2013)

**DECISION GRANTING COMPENSATION TO THE UTILITY CONSUMERS' ACTION
 NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 13-11-004**

Claimant: Utility Consumers' Action Network (UCAN)	For contribution to Decision (D.) 13-11-004
Claimed: \$30,886.60¹	Awarded: \$26,416.60 (reduced 14.5%)
Assigned Commissioner: Michael R. Peevey	Assigned Administrative Law Judge (ALJ): Hallie Yacknin

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:

This decision approves San Diego Gas & Electric Company's (SDG&E) settlement with Calpine Corporation and approves related amendments to its power purchase agreements (PPA) with Otay Mesa Energy Center, LLC (OMEC) and Calpine Energy Services, L.P. (Calpine) to resolve an ongoing dispute concerning force majeure claims related to the OMEC PPA. The Settlement Agreement results from a dispute between SDG&E and OMEC regarding two extended outages at the OMEC facility due to a failure of the generator

¹ UCAN has listed this total with an arithmetic error (detailed in Part IIIB). The correct total is \$30,586.60. This total has been used to determine the percentage this award has been reduced from the claimed total.

where CES was demanding payment under the force majeure clause in the PPA and SDG&E disputed the claim.

B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	August 15, 2013	Verified
2. Other Specified Date for NOI:		
3. Date NOI Filed:	September 12, 2013	Verified
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	D.10-05-013 in addition to the findings in the NOI filed in this docket. (See Comment 1.)	Application (A.) 13-05-012
6. Date of ALJ ruling:	May 10, 2010 and in this docket on October 10, 2013	October 10, 2013
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	D.10-05-013, in addition to the findings in the NOI filed in this docket (See Comment 1.)	A.13-05-012
10. Date of ALJ ruling:	May 10, 2010 and in this docket on October 10, 2013	October 10, 2013
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-11-004	Verified
14. Date of Issuance of Final Order or Decision:	November 20, 2013	Verified
15. File date of compensation request:		January 21, 2014
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
1	X	Verified	UCAN filed its Notice of Intent on September 12, 2013. On October 10, 2013 ALJ Yacknin ruled that the NOI demonstrated significant financial hardship, that UCAN has satisfied the eligibility requirements of the California Public Utilities Code Section 1804(a), and that UCAN has been determined to be eligible for compensation in this proceeding.

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).

Intervenor's Claimed Contribution	Specific References to Claimant's Presentations and to Decision	CPUC Discussion
<p>1. The sole issue was whether this settlement was reasonable in light of the whole record, consistent with law and in the public interest. UCAN evaluated each proposed term of the settlement to determine the reasonableness of SDG&E's actions in light of their contractual obligations. UCAN covered all subject areas identified in the application including both the monetary cost of this settlement as well as the contract language modifications proposed for the Geysers PPA and</p>	<p>Nowhere is there discussion of what caused the breakdown, or why Calpine believes the breakdown was Force Majeure, or why SDG&E is unsure if it was Force Majeure. (UCAN protest at 3.)</p> <p>No justification has been given in this application about what was broken, why it happened, or why it is in the best interest of the ratepayers to settle this issue. The only explanation offered as to why this settlement is favorable to the ratepayers is that there are additional benefits of settling: the avoidance of litigation, and a modified agreement for the purchase of geothermal generation. (UCAN's protest at 304.)</p> <p>A further benefit that SDG&E cites as reason to approve the settlement with Calpine is that SDG&E has been actively looking for opportunities to "optimize its RPS portfolio to obtain ratepayer value, including making sales from the</p>	<p>UCAN did substantially contribute to the Commission's consideration of the monetary value of the settlement. Though UCAN's presentation did not accurately demonstrate the settlement costs to ratepayers, nevertheless its efforts alerted the ALJ to SDG&E's miscalculation and thereby substantially contributed to the Commission's determination in D.13-11-004 that the settlement costs were higher than SDG&E claimed.</p>

<p>the OMEC PPA.</p>	<p>portfolio and/or reducing volumes of RPS energy”. What is unclear from tis application is what circumstances are causing SDG&E to need to make sales or reduce volumes. (UCAN protest at 4.)</p> <p>It is unclear what advantages the ratepayers receive by modifying the Geysers PPA through this agreement. Without more information from SDG&E it is impossible to examine this issue with clarity. Why does SDG&E believe reducing their purchase of geothermal power in the face of the SONGS shutdown is a wise idea, or likely to save ratepayer money? Are there other alternatives to joining these two distinct issues? UCAN is all for saving ratepayer dollars, but SDG&E has yet to show that this settlement is the best way to do that. (UCAN protest at 6.)</p>	
<p>UCAN demonstrated that SDG&E’s proposed settlement costs to the ratepayer were 20% more expensive then they claimed. In briefs and through testimony, SDG&E claimed that the true cost to the rate payers of this settlement was 50 cents on the dollar for the amount in dispute. UCAN demonstrated that SDG&E’s analysis</p>	<p>In SDG&E’s application to the Commission through their filed direct testimony, in the cross examination of SDG&E’s witness and in their brief SDG&E maintained that the figures they presented to the Commission demonstrated that the costs of this settlement to the ratepayer represented only 50% of the disputed amount with OMEC. (SDG&E witness Theodore Roberts direct testimony at 6, lines 20-21. Theodore Roberts’s cross-examination, Transcript at 41, lines 15-16 and SDG&E brief at 8.) At 5 of UCAN’s brief UCAN demonstrated how SDG&E’s numbers were misapplied. Footnote #5 at 6 of the decision notes that SDG&E errs in its comparison of the relative ratepayer costs under UCAN’s proposal versus the settlement.</p>	

<p>was incorrect and that ratepayer costs of this settlement were 20% higher than what SDG&E's witness testified to.</p>	<p>In addition, Finding-of-Fact # 1 says: Comparing the net ratepayer costs of the settlement (payment of the full amount in dispute less the amount of the avoided loss associated with the reduction of deliveries under the geysers PPA) to the amount of force majeure dispute, ratepayers will pay about 70 cents on the dollar, not 50 cents.</p>	
<p>2. This application involved a settlement of a dispute where a power producer's equipment went offline for an extended period of time, twice, yet the power producer demanded payment for the time period of the outage under the force majeure clause of its PPA because its equipment broke while the plant was using good utility practice. UCAN believed that this settlement needed examination given the amount in dispute. UCAN's participation led to the examination of a multimillion dollar settlement involving ratepayer dollars and several amendments to 2 different PPA's involving two different power producing</p>	<p>In addition to showing the true cost of this settlement was more expensive to the ratepayer than SDG&E claimed, (see Finding-of-Fact #1,) UCAN's participation led to the examination of whether SDG&E exercised due diligence prior entering into the settlement with OMEC as well as whether the settlement conformed to other Commission decisions and rules. Although the Commission ultimately found the settlement reasonable, UCAN's increased scrutiny of the proposed settlement allowed the Commission to build a stronger record to support the Final Decision's findings.</p> <p>"... UCAN argues that the settlement should be rejected because SDG&E did not exercise due diligence to confirm whether OMEC was using 'Good Utility Practice' as defined in the OMEC PPA" citing at 7 of the decision.</p> <p>UCAN also argued that SDG&E had provided no evidence that the proposed settlement complied with SDG&E's Commission requirements for their Renewable Portfolio Standard, Long-Term Procurement Plan, or Energy Resource Recovery Account obligations. Citing UCAN's brief at 11.</p>	<p>D.13-11-004 finds that the force majeure language in the OMEC PPA creates significant litigation risk and that the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.</p> <p>UCAN did substantially contribute to the Commission's consideration of SDG&E's contractual obligations under the contract (including whether SDG&E has exercised due diligence to determine whether there had been a force majeure event), or otherwise inform the CPUC's consideration of the extent of litigation risk associated with SDG&E's contractual obligations.</p>

facilities. No other party, including Office of Ratepayer Advocates (ORA), ² intervened even though the numbers regarding this dispute presented and SDG&E's investigation into the cause of the outage deserved close examination.		
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the ORA a party to the proceeding?	No	Verified
b. Were there other parties to the proceeding with positions similar to yours?	No	Verified
c. If so, provide name of other parties:		
d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: ORA was not a party to this proceeding.		Verified

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§ 1801 and § 1806):**

a. Intervenor's claim of cost reasonableness: In this case SDG&E proposed a multimillion dollar deal to settle with Calpine for two payments regarding outages at the OMEC. SDG&E agreed to pay a multimillion dollar settlement, for two extended outages where both the cause and liability of the outages were in dispute. UCAN believed further investigation was	CPUC Discussion UCAN substantially contributed to the Commission's
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² The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p>warranted in light of the fact that the two outages were to the same generator, caused in the same way approximately 6 months apart.</p> <p>No other party, including ORA, sought to examine this multimillion dollar settlement involving ratepayer dollars.</p> <p>After examining the figures, information provided from data requests, consulting experts and through getting answers from SDG&E's witness during cross examination, UCAN was able to show that SDG&E's math was wrong. In their decision the Commission noted that SDG&E double counted a credit (<i>see</i> footnote #5 of the decision) and that the true cost of the settlement was that the ratepayer will pay 70 cents on the dollar not 50 cents. (<i>See</i> finding of fact #1.) By correctly understanding the impact on ratepayers, the Commission was able to accurately judge the reasonableness of the settlement.</p> <p>UCAN also challenged whether SDG&E did their due diligence in determining if OMEC was in fact using Good Utility practice. Through this challenge, SDG&E had to provide additional information and support for its position, thereby providing further transparency to the ratepayers.</p> <p>Even though the Commission eventually approved this settlement, through UCAN's advocacy the true facts about this settlements cost were known. This settlement represented a 20% rise in ratepayer costs form SDG&E's sworn testimony. Had this application not been challenged, the figures advanced by SDG&E would have been accepted at face value and used for the record that the Commission used to judge reasonableness. The Commission's record, therefore, would have been incorrect and incomplete.</p>	<p>consideration of litigation risk associated with SDG&E's obligations and to the Commission's consideration of the reasonableness of the contract language modifications.</p> <p>As discussed above, UCAN did substantially contribute to the Commission's consideration of the cost of the settlement as compared to litigation risk by alerting the Commission to a possible error in SDG&E's computation. Accordingly, the reasonable cost of participation on this issue is compensable.</p>
<p>b. Reasonableness of hours claimed:</p> <p>UCAN spent a total of 45.25 hours for attorney time, 38 hours for expert witness time and 18.5 hours for travel and Comp Claim preparation. This modest amount of hours is reasonable. UCAN was the only intervenor in this docket; therefore, it could not share the work with other parties. This docket included complicated issues relating to a factual dispute regarding two different outages, power purchase from two different facilities, factual questions of due diligence and power purchase for the future. UCAN's advocate and expert had to put examine the application, write a protest, propound data requests, attend the Prehearing Conference, prepare and conduct cross examination, prepare and write UCAN's brief, write comments on the Proposed Decision, write a motion to strike SDG&E's reply brief, and arrange <i>ex-parte</i> meetings.</p> <p>Given the size of the settlement, its complexity, the number of amendments proposed by SDG&E to two different PPA's, and the modest amount of hours spent on this case, UCAN's hours are reasonable.</p>	<p>UCAN claims a total of 45.25 hours for attorney time, 38 hours for expert witness time and 18.5 hours for travel and compensation claim preparation. Further, 38 hours of work for witness Croyle is reasonable in light of UCAN's contribution.</p>

<p>c. Allocation of hours by issue:</p> <p>The single issue identified in the scoping memo in this case is whether this settlement was reasonable in light of the whole record, consistent with law and in the public interest.</p> <p>In this case UCAN briefed three issues: what was the true cost of settlement; did SDG&E perform due diligence; and was the settlement consistent with other Commission decisions or rules? These issues were not identified in the scoping memo and were only discovered after cross-examination. All of these issues UCAN raised relate to the main scoping memo issue of whether this settlement was reasonable, consistent with law and in the public interest. Because these issues developed through cross examination and were not known to be separate sub-issues from the one identified in the scoping memo, all time recorded by UCAN relates to the single scoping memo issue. However, in an attempt to provide an estimation of percentage of time spent on these issues in UCAN's brief and comments, UCAN would estimate the following:</p> <p>Cost of settlement - 55 % Due Diligence – 35% Was the settlement in conformity with other Commission cases – 10%</p> <p>As always, should the Commission staff have any question or need information as it relates to UCAN'S issue coding above, or need further information on hours spent per issue, or any other issue covered in this compensation request, UCAN respectfully requests the opportunity to provide any additional information that may be needed.</p>	<p>UCAN claims that 55% of its time was spent on the issue of the cost of the settlement as compared to the other issues. While UCAN's timesheet for attorney Kelly does not make any allocation of time by issue, this allocation with respect to attorney Kelly's time appears reasonable based on Kelly's participation in the record.</p> <p>In the future UCAN must produce time records that present the allocation of all time by issues that correspond to those listed in the scoping memo or final decision. Time sheets must also include a breakdown of all travel hours.</p>
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B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Donald Kelly	2013	45.25	\$390	See attachments 2 & 3	\$17,647.50	45.25	\$310	\$14,027.50
David Croyle	2013	38	\$225	D.10-10-012	\$8,850.00 ³	38	\$230	\$8,740
Subtotal: \$26,497.50 ⁴						Subtotal: \$22,767.50		
OTHER FEES								

³ UCAN has listed this total with an arithmetic error. The correct total is \$8,550.

⁴ UCAN has listed this total with an arithmetic error. The correct total is \$26,497.50.

Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel, etc.):**								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Donald Kelly	2013	13.5	\$195	See attachments 2 & 3	\$2,632.50	13.5	\$155	\$2,092.50
Subtotal: \$29,130.00⁵						Subtotal: \$24,860.00		
INTERVENOR COMPENSATION CLAIM PREPARATION**								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Donald Kelly	2014	5	\$195 is 50% of hourly rate	See attachments 2 & 3	\$975	5	\$155	\$775.00
Subtotal: \$30,105⁶						Subtotal: \$25,635.00		
COSTS								
#	Item	Detail			Amount	Amount		
	Donald Kelly Travel costs	Travel receipts, see attachment 4 & 5			\$781.60	\$781.60		
TOTAL REQUEST: \$30,886.60⁷						TOTAL AWARD: \$ 26,416.60		
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>								
Attorney		Date Admitted to CA BAR ⁸		Member Number		Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation		
Donald Kelly		December 5, 1990		151095		No.		

C. CPUC Disallowances & Adjustments:

Item	Reason
Donald Kelly's hourly rate.	<p>Kelly has no previous work before the Commission for which he has received compensation. D.08-04-010 at 7 (Rates for New Representatives) states:</p> <p>Intervenor representatives who previously have not appeared before the Commission must make a showing in the</p>

⁵ UCAN has listed this total with an arithmetic error. The correct total is \$28,830.

⁶ UCAN has listed this total with an arithmetic error. The correct total is \$29,805.

⁷ UCAN has listed this total with an arithmetic error. The correct total is \$30,586.60.

⁸ This information may be obtained at: <http://www.calbar.ca.gov>.

	<p>compensation request to justify their proposed hourly rate. The requested rate must be within the established range of rates for any given level of experience, and, consistent with the guidelines in D.05-11-031, must take into consideration the rates previously awarded other representatives with comparable training and experience, and performing similar services. (See § 1806.)</p> <p>We reject Claimant's comparison of Kelly's experience to that of The Utility Reform Network's representative Christine Mailloux, whose rate is set within the range of hourly rates for representatives with 13+ years of experience. Mailloux has 13 years of experience practicing before the Commission; Kelly has none. Although Kelly has 23 years of practice as an attorney, that experience (criminal defense, personal injury, juvenile dependency proceedings, professional licensing, and involuntary commitment) is not applicable to the issues before the Commission and the proceedings at hand. Finally, the quality of Kelly's work in this proceeding did not approach that of an experienced practitioner; for example, he did not demonstrate familiarity with Commission practice as might have been obtained by reviewing the Rules of Practice and Procedure. (See, e.g., Prehearing Conference Tr., August 15, 2013.)</p> <p>In recognition of Kelly's years of legal experience in other areas of practice and his current position as Executive Director of UCAN, we set his hourly rate for work in 2013 and 2014 at \$310, pursuant to Resolution ALJ-287.</p>
2013 Hourly Rate for David Croyle	<p>UCAN requests an hourly rate of \$225 for David Croyle in this claim. Croyle was last awarded an hourly rate of \$225 in in D.11-03-024. Resolution ALJ-287 approved a Cost-of-Living Adjustment of 2% for work performed in the 2013 calendar year. We apply this 2% Cost-of-Living Adjustment to Croyle's previous rate to adopt an hourly rate of \$310 for Croyle's work in 2013</p>

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?

Yes.

If so:

Party	Reason for Opposition	CPUC Disposition
SDG&E	No substantial contribution, unreasonable claimed attorney fees, costs related to Croyle are not eligible for compensation, UCAN fails to break down request by issue, excessive hourly fee requested, hours accrued by Kelly to draft motion to strike SDG&E's reply comments on proposed decision are unreasonable.	See discussion above.

B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?	No
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If not:

Party	CPUC Disposition
Utility Consumers' Action Network	<p>The Utility Consumers' Action Network filed comments on July 22, 2014 requesting a higher rate for Donald Kelly, citing his 23 years of litigation experience, placing him in the 13+ year experience range for attorneys.</p> <p>The decision has been modified to increase Donald Kelly's hourly rate from \$230 to \$310. This rate is within the range for attorneys with 13+ years of experience, pursuant to Resolution ALJ -287. Consistent with the guidelines in D. 05-11-031, we must take into consideration the rates previously awarded other representatives with comparable training and experience, and performing similar services. Although Kelly has 23 years of practice as an attorney, that experience (criminal defense, professional licensing, DUIs, traffic tickets) is not applicable to the issues before the Commission and the proceeding at hand, meriting a lower hourly rate within the range.</p>

FINDINGS OF FACT

1. Utility Consumers' Action Network has made a substantial contribution to D.13-11-004.
2. The requested hourly rates for Utility Consumers' Action Network's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$26,416.60.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§1801-1812.

ORDER

1. Utility Consumers' Action Network is awarded \$26,416.60.
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay Utility Consumers' Action Network the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 1, 2014, the 75th day after the filing of Utility Consumers' Action Network request, and continuing until full payment is made.
3. The comment period for today's decision is not waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1311004		
Proceeding(s):	A1305012		
Author:	Commissioner Michael Peevey		
Payer(s):	San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change / Disallowance
Utility Consumers' Action Network (UCAN)	1/21/2014	\$30,886.60 ¹	\$26,416.60	No	Changes in hourly rate(s);

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Donald	Kelly	Attorney	UCAN	\$390	2013	\$310
Donald	Kelly	Attorney	UCAN	\$390/\$195	2014	\$310/\$155
David	Croyle	Expert	UCAN	\$225	2013	\$225

(END OF APPENDIX)

¹ UCAN has listed this total with an arithmetic error. The correct total is \$30,586.60.